Select Committee composed of Messrs. Krishnaswamy Rao, Rama Vurma, Kuruvila and the mover and that it be published in the Gazette.

Seconded by Mr. Nagam Aiya.

Carried.

THE LEGISLATIVE COUNCIL REGULATION AMENDMENT BILL.

Mr. Krishnaswamy Rao.—

I beg leave to introduce a Bill for the amendment of Regulation II of 1063 which now regulates the constitution of this Council. The chief defect in the present law is that it does not define the powers of the Council. Owing to the peculiar political conditions of this State, it is not possible for the local legislature to enact laws affecting several matters coming within the sphere of the imperial policy of the paramount power, such as customs and salt duties, treatment of European vagrants, extradition of criminals, Sea ports, British Post office and Telegraphs and the like. To remove the doubts which may arise as to the legality of the orders of the executive in relation to such matters, it is necessary to exclude them from the jurisdiction of the Council. The main object of this Bill is to define the powers of the Council.

I have taken this opportunity to introduce some other amendments suggested by the Indian Councils Act of 1892 which regulates the constitution of the Legislative Councils in India. Travancore does not differ materially from British India in point of education, intelligence and civilization of its inhabitants. The success which the Act of 1892 has achieved in British India warrants the adoption of some system of election here in the nomination of all or a few of the non-official members.

The maximum strength of the Council now is 9 members including the President. An increase in the number of councillors may secure a better representation of all interests in the country. The Legislative Council of Ceylon consists of 15 members exclusive of the Governor, the Viceregal Council 21, and the Provincial Councils of Bombay and Madras 24 each. Travancore is very nearly equal to Ceylon in area and population. I think that a Council of 15 members for Travancore will not be unwieldy.

The Bill which I seek to introduce is sketched on the main lines above indicated. I need not take up the time of the Council by an exposition of the other matters dealt with in the Bill as they do not materially differ from the existing law.

Seconded by Mr. Thanu Pillai.

Carried.

Leave having been granted he introduced the Bill and moved that the Bill with statement of Objects and Reasons be published in the Gazette.

Seconded by Mr. Prince.

Carried.

PENAL CODE BILL.

Mr. Krishnaswamy Rao.—

I beg that the Penal Code Bill as amended by the Select Committee be taken into consideration. It was published in the Travancore Gazette of the 10th March last. I think that it has been sufficiently long before the public. It is very gratifying to note that this Bill has been more carefully studied by the public and the press than any other legislative measure introduced into this Council. The thanks of the Council are due to the gentlemen who have favoured us with their criticisms and suggestions. They will be glad to find that some of their suggestions have been adopted by the Council. I intend to make a few general observations on some of the important criticisms and suggestions.

Exception is taken to section 85 of the Bill on the ground that it is superfluous. It may be that no sensible Magistrate will punish a schoolmaster for correcting a pupil by the application of the cane in the usual way. But we should not forget that the absence of a clear provision on the point often misleads the pupil or his advisers into the erroneous belief that a prosecution for assault will be successful.

LIBRARY ARCHIVES Kerala Legislative Assembly

One of the main objects of this section is to remove this misapprehension. Moreover, a clear provision of law will be a great help to the Criminal Courts who, in its absence, will be called upon to decide the question of privilege upon an elaborate consideration of first principles. It will prevent much waste of public time and secure uniformity in the administration of Criminal Justice. For the sake of clearness superfluity is often necessary. The Select Committee took it from the New York Code which enjoys a high reputation in legal circles. I may also mention here that in the draft Penal Code prepared by Sir Fitz James Stephen for Great Britain and Ireland similar provision is made.

Section 111 of the Bill which relates to offences on the person of the Sovereign has been commented upon from various stand points. No Penal Code could be said to be complete which does not provide for punishment of offences against the highest personage in the State. The improbability of such a provision becoming necessary is not a sufficient ground for omitting it altogether. In the present state of commerce and trade in Travancore, it is not probable that our Courts will be called upon to try offences relating to trade-mark. On that account can we omit Chapter XVIII from the Bill? It seems to me that the rarity of an offence is no reason for ignoring it in the general Penal Code. I need hardly say that the passing of a Penal law with retrospective effect is opposed to the enlightened principles of legislation. The absence of similar provision in the Indian Penal Code is accounted for by the fact that Her Majesty the Empress of India does not reside in India. Regicide or attempt at regicide must be treated as capital offences. They are high treason under the English law and punishable with death. Offences against the ruler of a State are really offences against the State. The Indian Penal Code makes no difference between an offence against the State and its attempt (see section 121). We have here more safeguards than elsewhere against the execution of an unjust sentence of death or imprisonment for life. With reference to assaults and other minor offences on the person of the Sovereign, I have given notice of my intention to move that they be removed from the category of capital offences.

A proposal has been made to the effect that the immunity granted to the wife, husband, father, mother of an offender in the matter of harbouring, should be extended to all the members of an undivided family. Such an extension will lead to investigations far beyond the scope of Criminal trials and to miscarriage of justice by enlarging the number of those who may be excused from their duty to the Government and the public of bringing offenders to justice. The further extension of the immunity seems to be undesirable.

Section 182 of the Bill which proposes a penalty for disobedience to the orders of Government in relation to places of public worship and processions has been severely criticised by the Protestant Missionaries of Travancore. The Royal Proclamation of M. E. 1004 which is still in force, commands that no Hindu temple, Mahomedan mosque or Christian church shall be erected without the previous sanction of the Government. The circumstances which led to the passing of this Proclamation are briefly these:—

In 1002 or about that time, a Christian church was built at Mavelikara; quite close to the place where the Aurat festival in honor of the local Hindu Diety had been annually celebrated from time immemorial. The authorities in charge of the Hindu temple brought to the notice of the Government, that the Aurat festival could not be performed at the usual place owing to the proximity of the Christian church which was open to all classes who embraced Christianity. The Government then selected another place for the performance of the Aurat festival and handed it over to the Hindu institution. Feeling that it may not be always possible to make such arrangements on every similar occasion, the Government of Her Highness the Regent-Ranee Parvathi Boyee, during the time when Colonel Morison C. B., was the British Resident, issued the Proclamation now in force, prohibiting *all classes* of Her Highness' subjects from erecting places of worship without the previous sanction of Government. In the Proclamation, the Government have undertaken *to provide the various communities with suitable sites for erection of temples, churches &c.* in such localities as may not interfere with the interests of others in the matter of religion. The sole object of the prohibition was to avoid conflicts between various communities in the exercise of their religious duties. That the Proclamation was

LIBRARY ARCHIVES Kerala Legislative Assembly

not conceived in a spirit of intolerance is clear from the circumstances which led to its promulgation, and also from the attitude of Government since its publication. From a return furnished to me by the Government, of the applications for permission to erect places of worship which came to the Dewan for disposal, I find that during the 12 years that preceded the current Malabar year Christians made 127 applications for permission to build churches, and *all but five* applications were granted; and that the Mahomedans made 21 applications, 16 of which were successful. There was only *one* application made by a Hindu, which was granted. More than 96 per cent of applications made by Christians were granted, while the percentage of applications granted in the case of Mahomedans was less than 77. The return has disclosed the singular circumstance that there were 6 cases in which one sect of Christians opposed the application of another sect of Christians for permission to build churches. Out of the 5 rejected applicatons of the Christians, 3 were dismissed on the opposition of their co-religionists of different denominations, and the remaining 2 on the opposition of other religionists (Hindus &c.). These figures prove that the applications made by Christians received most favourable consideration and were dealt with in a perfectly tolerant spirit. We could not expect to find a stronger proof of tolerance than the admissions of the Protestant Missionaries who say in their memorial that they have not been in the practice of applying for permission to build churches as required by the Royal Proclamation of 1004, and that they have built several churches without any opposition on the part of the Government. As I have already pointed out, one sect of Christians have in the past opposed the application of another sect of Christians. I will here give two instances to show that the Proclamation is not unpopular with the Christian community. The Most Reverend Mar Dionysius, the Metropolitan of the Syrian Church, fully approves of the principles on which the Proclamation is based. The Roman Catholic Bishop of Quilon in his letter dated 2nd October 1895, complains against Messrs Soarez and Alvary (Christians) who were trying to erect, without the previous sanction of Government, a Chapel at Cape Comorin within 300 feet from the Roman Catholic Church already in existence. The opening sentence of the letter runs as follows:—"I have the honor to address you on a subject not only of importance to me individually as the Bishop of this Diocese but to the *whole* body of Roman Catholic "Christians who are entitled to protection from the Government in the exercise of "their religion and to have their religious feelings duly respected." In another part of the letter the following passage occurs.—"This (the erection of the Chapel "by Messrs Soarez and Alvary) was done ostensibly for the purpose of creating a "nuisance and of wounding and insulting the feelings of the faithful subject to me. "It was with difficulty that the Priests under me scarcely restrained the angry "feelings of the Catholics not only of Cape Comorin but also of the adjacent villages, "but for the timely interference of *the Dewan Peishcar who issued strict orders for the* "*immediate closing up of the Chapel in question, there would have been a serious riot.*" The Dewan Peishcar, of course, acted under the authority of the Royal Proclamation and prevented a serious riot. The sentiments expressed in the letter by the Bishop of Quilon may be taken as representing the feelings of Roman Catholic subjects of this State who, according to the last Census Report, number 2,79,197, in other words form 52 per cent of the Christian population of Travancore. The Venerable Archdeacon J. Caley who is one of the memorialists and a leading Protestant Missionary in Travancore, sought the intervention of Mr. T. Raja Rama Row when he was the Dewan Peishcar of Kottayam, to prevent the erection of a Roman Catholic Church near a Protestant Church. The facts as given by Mr. Raja Rama Row in his letter dated 28th May 1896, are these:—"There is a Protestant Anglican Church at "Chunganacherry and opposite to it there was some waste land. The Roman "Catholic Bishop of Kottayam took it up and began the erection of a building "and the Reverend J. Caley wrote to me to see that the building was not erected "as ultimately it might be converted into a Roman Catholic Church and would *thus* "*cause trouble and difficulty to the Protestants.* On being questioned, the Roman Catholic Bishop said that it was not meant for a church." Here we have both Protestants and Roman Catholics seeking the intervention of Divisional officers under the Royal Proclamation. The spirit of opposition which exists among the different sections of Christians towards each other, is likely to increase owing to the split in the Syrian Church and the presence of the Salvation Army in the country. There is no more competent authority than the Government to interfere in cases of difference between the various sects of Christians and make such arrangements as will remove all causes

LIBRARY ARCHIVES Kerala Legislative Assembly

of conflict and thereby secure peace. The Royal Proclamation and the section now in question apply to Hindus, Mahomedans and Christians alike. We have a large and increasing Mahomedan population. Their present number is 1,58,823. They have not availed themselves of liberal education and other civilizing influences to the same extent as other religionists have done. The chief characteristic of the Mahomedan religion is intolerance. I need not remind the Council that almost all the recent riots in British India, had their origin in the Hindus and Mahomedans coming in close contact in the exercise of their respective religions. Even among the Hindus, there are sects opposed to one another. The erection of a pagoda at which animal sacrifices are offered close to a pagoda where such sacrifices are forbidden will cause a serious breach of the peace. The memorable riots at Salem and the recent riot at Kalugumalai in Tinnevelly District in which a Deputy Collector was murdered arose from the erection of places of public worship. In 1067 M. E. we had a riot in South Travancore in consequence of the erection of a Chapel by the Salvation Army. It is the opinion of many eminent authorities that such riots are preventable by regulations regarding the erection of public places of worship. Mr. Wigram, a distinguished member of the Indian Civil Service and who was District and Sessions Judge in the Madras Presidency says—"The sooner the Government obtain power not only to prohibit the erection of mosques and shrines without sanction but also to suppress such mosques and shrines if necessary and this not only in Malabar but throughout the Presidency, the better will it be for themselves and for the people." The Malabar Land Commission which consisted of Rajah Sir T. Madava Rao, as President, Messrs. Logan and Wigram, the Honorable Sankara Nair and Mr. P. Karunakara Menon, as Members, say in their report—"We have drafted an Act for controlling the erection and use of *all* buildings intended to be used as places of public worship. Our Act provides that in future no place of public worship should be erected or used without a license to be obtained from the Collector." On the draft Act prepared by this Committee being referred to the Madras High Court for opinion, the Chief Justice (Sir Charles Turner) observed—"The proposed legislation is called for by the circumstances of this country." Mr. Justice Brandt approved of the proposed enactment. Mr. Justice Kernan remarked "I think it will be very useful." The late Sir T. Muthuswami Iyer recorded his opinion as follows:—"In the special circumstances of this country the proposed legislation seems to me to be necessary. Persons following different religions and having aggressive religious convictions live side by side in important towns. The riots which have occurred in this Presidency have often led me to think that some positive enactments may not be out of place with respect to *the whole Presidency* in regard to places of worship and to processions." The Board of Revenue observed—"This proposal has the full approval and support of the Board and might be advantageously made of general application throughout the Presidency." Para 16 of the Proclamation of the Ceylon Government dated 21st November 1818, declares that the Colonial Government will not give their support to places of worship erected without a license from the Colonial Government." Some of our critics are of opinion that this section should be dropped and a separate Bill specially applicable to places of worship should be brought in. The Royal Proclamation is as good as a Regulation. It requires the public to obtain previous sanction of Government to erect places of worship and undertakes to procure suitable sites. Its only defect is that it does not contain any provision for the punishment of those who may act in contravention to it. In these progressive times, a law without penalty would be a dead letter. In the Penal Code drafted for England by Sir Fitz James Stephen, the following section occurs—"Every one shall be guilty of an indictable offence and shall be liable upon conviction thereof to one year's imprisonment, who disobeys *any statute of the realm*." From this it is clear that the Penal Code is not an improper place for insertion of the section under discussion, as it deals with disobedience to a local statute viz., the Royal Poclamation of 1004. As this section is to be applied to all classes of His Highness' subjects and to all parts of Travancore, its insertion in the general Penal Code is not open to objection. It forms part of the Chapter which treats of the contempts of the lawful authority of public servants, as it relates to the contempt of the authority of Government. It is also impossible to lay down in a Regulation all the various conditions and circumstances which the Government should consider in disposing of an application for permission to erect a place of worship. I am glad to note that no objection is taken to the section in so far as it relates to processions.

LIBRARY ARCHIVES Kerala Legislative Assembly

The Protestant Missionaries in their memorial refer to the absence of similar restrictions in British India. The provision we have in this State is preventive. In British India there is Act V of 1861 as amended by Act VIII of 1895, which authorizes the Government to proclaim the locality where any riot is committed as a disturbed tract, to impose a special tax upon *all* the residents of such place and to quarter there additional Police for the preservation of peace, during the pleasure of Government.

To remove the misapprehension under which the reverend memorialists seem to labour as to the meaning of the words "place of public worship" I intend to propose for the consideration of the Council a definition which will exclude from the operation of the section, houses and schools where prayers may be offered. I further intend to move that no substantive term of imprisonment be passed upon the offender. The maximum amount of fine will be Rs. 500. After this, nobody will say that we are erring on the side of severity. In the Bill I intend to introduce for the amendment of the Criminal Procedure Code, I will propose that these cases shall not be cognizable by the Police and that they be tried exclusively by District Magistrates. As the offence is a contempt of the authority of the Government, the previous sanction of the Government will be necessary (on general principles applicable to contempt of authority) to the initiation of criminal proceedings. The memorialists may rest assured that the spirit of tolerance which had made Travancore, the home of more Christians than can be found in any other part of India of equal area, will continue to be the distinguishing trait of this Government and that in the disposal of applications for permission to build churches, no other consideration than that of preventing breaches of the peace in the general interests of the State, will be allowed to influence its decision.

One of our critics has observed that section 195 does not provide for the punishment of the party who bribes a witness for the purpose of giving evidence. I have simply to point out to him that such party is liable to punishment as an abettor under the provisions of Chapter V of the Bill.

Section 288 of the Bill which relates to nuisances committed by cattle has been commented upon in different lights. The inhabitants of Vilavancode urge that it should be altogether omitted, while Mr. Raja Raja Varma of Haripad thinks that its scope should be extended so as to cover nuisances committed in places where there are no pounds for impounding cattle. The nuisance is not confined to the towns. Even in rural places like Neduvengad, the D. P. W. has found it necessary to enclose the *verandah* of the Magistrate's Court with a small parapet wall all round, to prevent cattle trespassing into the building. Those who object to this provision of law should simply place themselves in the position of those whose flower or kitchen garden has been spoiled by the cattle of their neighbours. The fear of vexatious and false prosecutions expressed by the inhabitants of Vilavencode is groundless. The section requires proof of the fact that the offender's cattle were *twice impounded* during the course of a year preceding the date of the offence complained of. Pounds are established by Government in all important centres. Pound-keepers are required to keep regular registers of cattle impounded. These registers which are public documents could not be easily forged to support a case. Impounding cattle is not an easy task. Travancore cows have a very keen instinct for anticipating danger. They are very skilful in escaping capture by jumping over fences and compound walls, and when caught they do not submit to be driven to the pound but insist upon their being either carried or dragged—often a most tedious and difficult process especially when the pound happens to be at a distance. Scarcely one attempt out of ten, succeeds. With reference to the suggestion of Mr. Raja Raja Varma of Haripad that the section should be so amended as to give to a warning the same force as impounding, I have to observe that this amendment would hold out a premium to false charges. As I have already said we have pounds in all important centres. The Government will establish pounds in places where they may be required. I think that the section, as it now stands, supplies a long-felt want under proper safeguards.

If the Bill introduced by my friend Mr. Thanu Pillai to declare Marumakkathayom Sambandhoms as marriages, be passed, the explanations appended to the exception to Section 376 and to Section 501 may be omitted.

LIBRARY ARCHIVES Kerala Legislative Assembly

With reference to sections 164, 195 and 406, I think it unnecessary to say more than that they are taken from the Codes of the most civilized countries, (New York and Germany) and that the evils they seek to suppress, exist in this country.

With reference to Section 450 I have only to observe that one who has been evicted from possession of land in execution of a decree *to which he was a party* or those who claim under him should not be allowed to enter upon such land, and that the offence of criminal trespass committed by them, involves also contempt of lawful authority.

With these remarks I request the Council to proceed with the consideration of the amendments of which notice has been given.

Seconded by Mr. Prince.

Carried.

Section 85.

Mr. Thanu Pillai.—I beg to move that the words 'in the case of males' be inserted between 'is' and 'of' in the first line and the words 'and in the case of females of the age of 12 years or less' between 'less' and 'by' in line 2.

As the section now stands protection is afforded to parents and guardians in regard to the correction of all of the age of 16 or less—including females. I think this should not be. It is a well-known fact that woman's growth is very rapid in India and often a girl attains puberty before she is 12 or 13 and not unfrequently she is a mother before she reaches her 14th year. Such a girl ought not certainly to be freely subjected to correctional treatment by guardians even though it be for educational purposes! The amendment now proposed confines the privilege to girls of 12 and under.

Seconded by Mr. Krishnaswamy Rao.

Carried.

Section 99.

Mr. Krishnaswamy Rao.—I beg to propose that another explanation be added to the section thus:—"Offence in this section includes any act committed at any place out of Travancore which if committed within Travancore would be punished under this Code."

We have extended the meaning of the term 'offence' in several other sections so as to include offences committed outside Travancore and the addition proposed is on the same principle.

Seconded by Mr. Prince.

Carried.

Section 111.

Mr. Krishnaswamy Rao.—As I have already stated, I beg to move the omission of the words "or assaults the person of the Sovereign of this kingdom."

Seconded by Mr. Ramanatha Rao.

Mr. Bensley.—I am inclined to think with Mr. Raja Raja Vurma of Haripad that the whole section should be omitted. As pointed out by him it is quite superfluous, and even mischievous.

Mr. Nagam Aiya.—

I fully agree with Mr. Bensley. This section is unnecessary. His Highness the Maha Rajah is already well protected. The person of the Sovereign is holy. Divine respect is paid to him. This is the estimate formed of His Highness by His loyal populations. It is therefore practically impossible that His Highness could be 'assaulted', or 'wrongfully restrained', or 'wrongfully confined', or 'hurt' in any other conceivable manner. There is not the slightest danger. We need not therefore legislate on this point. For the same reason, I oppose the amendment to the section also. I am sure my friends in the Council will grant that I am as loyal and devoted to His Highness the Maha Rajah as any of them here.

LIBRARY ARCHIVES Kerala Legislative Assembly

Mr. Prince.—As observed by the learned mover, no Penal Code can be considered complete unless it provides for such offences. That the offence is not likely to occur is not always a good reason for ignoring it altogether. I know some Colonial Governments go even much further. There is nothing novel in the provision.

The motion was put to the vote and carried by majority.

Mr. Krishnaswamy Rao.—I would move another amendment in this connection:—Add the following as a new para to section 111—"Whoever assaults or restrains or confines or causes hurt to the person of the Sovereign of this kingdom shall be punished with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine."

Seconded by Mr. Prince.

Carried by majority.

Section 117.

Mr. Thanu Pillai.—I beg to move that the words 'Our Government or the Government established by law in British India' be substituted for 'the Government established by law in Travancore or in British India.' This is self-explanatory.

Seconded by Mr. Rama Vurma.

Carried.

Mr. Thanu Pillai.—I have to move another amendment under this section:—Omit the words 'or with imprisonment for a term which may extend to 3 years to which fine may be added' (in lines 5 and 6), which have been retained evidently by oversight.

Seconded by Mr. Krishnaswamy Rao.

Carried.

Section 119.

Mr. Thanu Pillai.—I beg to propose the following amendment:—Omit the words 'commits depredation or' in the first line and insert 'in British India or' between 'depredation' and 'on' in the second line.

Seconded by Mr. Kuruvila.

President.—But this and the previous section require very careful consideration. I am not at all sure whether such provisions should find a place in the Penal Code. They are more or less based on purely international arrangements which may be made from time to time.

After some discussion it was resolved that the consideration of this and similar sections in the chapter be deferred to the next meeting—Saturday the 27th instant.

Section 182.

Mr. Kuruvila.—Before the Council adjourns this evening I beg the consideration of section 182 may be taken up. I am not certain of being able to attend the next meeting owing to unavoidable domestic engagements.

Here the Secretary read the communication from the Most Rev. Mar Dionysius.

Mr. Kuruvila.—

With reference to the letter from the Most Revd. Mar Dionysius and the petition already on record from the local representatives of the Church and London Missionary Societies, I beg permission to submit a few words for the consideration of the Council before they come to a decision on Section 182 of the Bill. I had proposed my amendment for omitting the section in order that I might have an opportunity of a discussion on the subject here, especially as I was new to the Council and was unaware of the circumstances which induced the Select Committee to propose this section. The novel character of the section has, of course, created alarm and apprehensions in the minds of several eminent Missionaries like Mr. Duthie, the Ven. Archdeacon Caley and other friends of the country. As it is very desirable that steps should be taken to allay such feelings, I tried to find out a proposal which I could submit to this Council as a course giving satisfaction to all sects of Christians; but owing to the rivalry existing among the sects as mentioned by the learned mover and owing to the absence of an established compact between the

LIBRARY ARCHIVES Kerala Legislative Assembly

heads of the several sects, I found it impracticable to arrive at such a solution of the difficulty. Although such rivalry is evidently permitted for the maintenance of the purity of the faith, I regret that it became the cause of this disappointment to me. And it is therefore my duty to give my own opinion formed in the light of the information derived after my arrival here. As far as I see, I hope that the amendments and safeguards proposed by the learned mover of the Bill to meet my proposed amendment, to the furthest extent possible, in his authoritative judgment, without sacrificing the higher interests of good government, along with his eloquent explanation of the circumstances necessitating the retention of the section in the modified form will allay the fears entertained by the petitioners; but as I am unable to undertake to speak with certainty about this result, I trust that the Council will postpone their decision on the section until at least two weeks are allowed to pass after the publication of this day's proceedings so that the public may feel assured that there is no intention to precipitate the passing of the section and that their views are being respected to the fullest extent possible. In this hope I beg to withdraw my amendment for the omission of the section.

Mr. Krishnaswamy Row.—I beg to move that the words 'simple imprisonment for a term not exceeding one year or with' be omitted and that the following explanation be added as explanation I (numbering the existing one as II):—

"Explanation I. A building consecrated or set apart for habitual use by a religious community or sect for purposes of common worship, is the place of public worship within the meaning of this section.

Exception.—A private residence or school shall not be deemed a place of public worship within the meaning of this section merely by reason of prayers being held there."

Mr. Ramanatha Rao.—

I have much pleasure in seconding the learned mover of the section under consideration. The rules of this ancient Hindu Principality have been friendly to the Christian community for centuries past and as a practical proof of such friendly feeling we find the country studded with churches of all denominations, more numerous than in any other part of India not excepting the oldest British Settlements. The section under discussion, be it noted, does not interfere with existing places of worship. It refers purely to the creation of new places of public worship and endeavours to place a slight restriction but does not purport to prohibit altogether the erection of such places of worship. The restriction imposed by the section is not a novel one and it simply reiterates and emphasises the Proclamation already existing and in force. While the Proclamation promulgated three quarters of a century ago is silent as to the measure of punishment to be meted out for violation of its terms, the present section but supplies a defect. This defect in the Proclamation alluded to has to be remedied in consideration of the improved administration of Law and Justice. The missionaries in their memorial to this Council admit that the existing Proclamation obtains and is observed in North Travancore and even the C. M. S. have sought permission under it to build churches. As a matter of fact the Roman Catholics and Syrian Christians have uniformly adhered to its provisions. But they say, the London Mission Society have never acted up to it. It is just for this very reason the section under discussion has to be enacted with a view of enforcing a uniform course of conduct by all classes of His Highness the Maha Rajah's Christian subjects. The erection of new places of public worship may in some cases lead to conflict with religious processions and that such processions are a fruitful source of rioting and blood-shed is amply evident from recent occurrences in British India. The erection of a new mosque on a road through which from time out of memory Hindu religious processions used to be conducted led to the unhappy Salem riots. The customary car procession over a road abutting which a church had been built resulted in rioting and fatal assault of a high Government official in the Ettiapuram Zemindary of the Tinnevelly District. Even the presence of a European Collector and District Magistrate did not avert rioting and assaulting of him on the occasion of a Hindu procession passing through a road where there was a mosque at Dhulia in the Bombay Presidency. These and other cases amply demonstrate the absolute necessity of a provision of law like the one we are discussing. It may be said while there is no such law in British India, why enact one for this State. There Act No. V of 1861 empowers the Government to

LIBRARY ARCHIVES Kerala Legislative Assembly

declare the scene of any such rioting to be a disturbed locality and impose a new tax on all the inhabitants therein for the location and maintenance of an additional Police force. This step, it will be conceded, is an efficient remedy and would have the effect of suppressing all riotous instincts on the part of the inhabitants of the locality. "Prevention is better than cure" is a very old and wise saying and it is therefore far better to have the section under consideration enacted rather than have recourse to more drastic measures. The chief complaint of the missionaries appears to me to be not that the Government have refused or are likely to refuse permission for the erection of new places of public worship but to lie in the long delay in according the permission sought for, in the past. This is easily obviated and the Government may be moved to pass a few general rules laying down the conditions and the time within which such sanction shall be granted.

Mr. Prince.—I would suggest using the indefinite article "a" rather than the definite article "the" in the 2nd line of the explanation between the words "is" and "place" and would further suggest the insertion of the words 'not so set apart' between 'school' and 'shall' and of 'or services' between 'prayers' and 'being.' With these additions the amended section would embrace all the necessary safeguards and render it perfectly unobjectionable. So far as I have been able to sound the leaders of the Missionary body they are not directly opposed to the restriction. Their complaint is more on account of the delay which they say occurs in the disposal of applications for sanction and to the want of a definition of the words place of public worship. This latter difficulty is cleared by the amended explanation and exception and as to delays this is a difficulty which can, of course, be effectually obviated by passing a set of detailed and definite rules for the guidance of the applicants and of the officers concerned.

Mr. Kuruvila.— The additions suggested will, I think, meet requirements.

Mr. Krishaswamy Rao.— I accept Mr. Prince's suggestions.

Mr. Rama Vurma.—

It is greatly to be regretted that the introduction of this section into the Penal Code has been objected to by men to whose opinion we cannot but attach much weight. I think the objection is due to some misapprehension. An idea prevails that this section is intended to invade the religious liberty of His Highness' subjects. Such an intention was quite foreign to the purpose aimed at by the members of the Select Committee as is evident from the reasons given for the introduction of this section. In a State like Travancore where the ruler, though a Hindu Prince, is equally interested in the welfare of his subjects, be they Christians, Mahomedans or Hindus, no one will for a moment entertain the idea to invade or curtail the religious liberty of his subjects. To the Maharajah as chief Magistrate, the various modes of worship which prevail in the State are equally useful. But it is his duty as responsible ruler to see that there exists mutual indulgence and religious concord among all classes of his subjects, whatever be the religions in which they profess to believe. The Maharajah's Government, while it "acknowledges the general advantages of religion as it is connected with civil Government, is equally convinced that various modes of worship contribute to the same salutary purpose." All that it cares about is that the subjects of His Highness the Maharajah should enjoy the free and peaceful exercise of their religions without being molested. In Travancore the creed of the ruler is matter of political indifference. The State considers itself bound "(1) to protect each of its individual members in the enjoyment of such religious freedom as is compatible with the religious freedom of all and with the performance of their secular obligations by all, and (2) to protect both the mass of the population and the small minorities of it against the superabundant weight and influence of religious organisations, whether small or great." The State must undertake this task quite prepared to meet the tremendous opposition that will be organized to resist its being carried out. The responsible statesman who undertakes it only must remember that he is fighting a great battle for peace. What the consequences will be must be matter of perfect indifference to him. It must be always before his mind that any attempt to please all is destined to fail. He must steadily proceed to make the implacable narrow spirits of one creed live in harmony with the bloody principles of another creed. That very few have objected to this section in this Bill can be taken as a clear proof of the public in general approving it. In Malabar very often riots arise having at their bottom as one of the chief causes the

LIBRARY ARCHIVES Kerala Legislative Assembly

erection of some Temple, Mosque or Church. In order to prevent the frequent recurrence of these troubles, the Malabar Land Commission very strongly recommended to the Madras Government the passing of a law to regulate the erection of places of public worship. These riots have now engaged the serious attention of the Madras Government. They have been considering measures to prevent them. We may, at no distant date, see a Bill to regulate the erection of places of public worship being passed into law by the legislature in British India. When I first saw this section in the Penal Code Bill I doubted the wisdom of curtailing the religious freedom of the Maharaja's subjects. Since, I consulted the views of many eminent men among Christians, Mahomedans, Parsees and Hindus. The opinions of all those whom I consulted were with one or two exceptions generally in favour of the introduction of the section into the Bill.

Mr. Bensley.—We have seen that the section rouses great opposition and has been characterized by its opponents as retrograde and tyrannical.

Is there any justice in this criticism? Is legislation upon the subject of erecting places of public worship necessary? Is the best means of such legislation by embodying a section in the Penal Code rendering such act a Criminal offence? Does not the existing law already give us the power to regulate the erection of places of public worship and to punish those who disobey?

Let me say at once I consider the position taken up in the memorials before the Council to use their own expression "untenable." That there is to be no restriction regarding the erection of places of public worship seems to me preposterous.

Where the number of religions is almost as great as that of castes, and where the more proselytising religions are apt to force themselves, where their actions are a menace to the public peace, Government *must* control their action.

Granted then that Government must control the erection of places of public worship is the enactment of a section in the Penal Code the only or the best way of securing such control?

It appears to me that the case can be dealt with quite satisfactorily under the provisions of the Criminal Procedure Code. Section 116, I take it, covers such cases. The question then is, should we have recourse to fresh legislation when the existing laws meet such contingencies? If it is authoritatively stated that the section does not take in these cases, I have nothing more to say.

Mr. Krishnaswamy Rao.—The High Court have ruled that Section 116 of the Criminal Procedure Code does not empower a Magistrate to prohibit the erection of a place of public worship.

Mr. Nagam Aiya.—I do not wish to vote on this question. I will make however a few observations in support of my position. I consider it unnecessary to legislate on the matter just at present. The time is not yet come for legislation. There seems to be perfect accord on one point between my learned friend, the mover of the Bill, and the Christian Missionaries whose feelings have been embittered by the proposed legislation, viz. that until now, there has been *no collision, no strife and no bloodshed* in the country for want of legislation. The reason, however, of this perfect peace and concord between the different religionists in Travancore is not, in my view, the existence of the Royal Proclamation of 1004 M. E. to which reference has been made in the course of the debate. That Royal Proclamation issued 67 years ago by the then Maha Rajah of Travancore, then barely 16 years old, contained in it words of wisdom and tolerance so characteristic of this ancient Government. His Highness therein laid down with perfect impartiality and an equal eye to all his subjects that, though he was anxious that their religious worship should proceed according to their respective persuasion and consciences it was however his wish that no new place of worship, whether Hindu Temples, or Christian Churches or Mahomedan Mosques, should be built in his kingdom without the previous sanction of his Government. I admire the perfect impartiality of this old Proclamation. It was exceedingly creditable to the boy Maha Rajah who issued it. But, gentlemen, lawyers found out long ago that this Proclamation contained no Penal clause in it and that it was therefore a perfectly innocuous document. The

LIBRARY ARCHIVES Kerala Legislative Assembly

knowledge of this defect in the law came of course to the people also, soon after it was known to the lawyers. So you may rest assured that whatever may be the reason of the existence of peace and good will between the different religionists in Travancore, it was certainly not owing to the existence of this innocuous Royal Proclamation. It is now proposed to strengthen this Proclamation by adding a penal clause to it and thus make it operative. I say that the necessity for doing so has not arisen. When it does arise it will be time enough for us to take action. Then it may be proper to attach penalties for the infringement of Government orders. Until then we should not move. This is why I do not wish to vote on the question to-day.

The motion was put to the vote and carried by majority, Mr. Nagam Aiya alone abstaining from voting.

President.—The learned mover has just explained very clearly the whole matter and I generally endorse his views. At the same time I wish to say a few words with reference to the controversy that has been raised and specially to the protest contained in the memorials before the Council. The Royal Proclamation of 1004 commands that permission shall be obtained for the erection of places of public worship and it has all along been in force. That it has not been conformed to in any particular locality does not detract from its authoritative character. It is as binding as any promulgated law in the land. If it has been infringed that only argues the greater necessity for enforcing obedience. It is contended that the immunity which the country enjoys from religious strifes and scenes of open violence is due not to the operation of the Proclamation but to the principle of religious toleration which has guided the policy of His Highness' Government. If this view were correct British India should be similarly free from those riots and out-bursts of religious animosity of which we often hear. Religious toleration is not less marked in British India than here and the arm of the Paramount Power is certainly stronger in maintaining public order and peace. But the peculiar feature in Travancore viz. the regulation of places of public worship is absent there, and along with this feature we find comparative harmony and orderliness among the different religionists in this country. The inference is obvious. It may be that other causes too have contributed to this happy result, though what they are it is not easy to analyse.

In speaking of religious toleration I need hardly observe that what is meant is toleration compatible with public order and peace. It is not intended to interfere with anybody's liberty to follow any form of faith he may choose, but where one set of religionists carry that liberty to an aggressive degree and would disturb the peace of their neighbours and needlessly offend their religious susceptibilities, the toleration of such conduct cannot certainly mean religious toleration. That would be really tolerating intolerance. The provision in question therefore far from being a departure from the recognised policy of this Government is prompted by the solicitude on their part to make it subserve its purpose all the more effectually in the interests of the community as a whole. In those early days when the Proclamation was issued there was nothing to suggest the necessity of anything beyond a mere declaration. Every order of Government commanded general obedience. Times have changed since and mere declaration has come to be treated as of no effect. Nobody can think of doing away with the Proclamation. The effect would be anything but beneficial to the interests of peace, as must appear from the recent agitations that have been made for and against the erection of certain churches between two rival sections of Roman Catholics. If the law is to continue in force, means should, of course, be devised to prevent its being brought into contempt; and it is with this view that legislation has now been resorted to. The learned mover has referred to the recorded opinions of the Malabar Land Commission and of the Judges of the Madras High Court. Their testimony as to the necessity of legislation in this direction is entitled to no small weight. It is true that the Madras Government have not yet passed any measure but the fact that the necessity was felt and urged by such high and responsible authorities is enough for our present purpose. I should here add that the Madras Government are not exactly in the position in which Travancore is in regard to the matter. Had they a law of the kind we have and the only question with them was as to how it should be enforced the case would doubtless be different.

LIBRARY ARCHIVES Kerala Legislative Assembly

If as Mr. Bensley suggests the existing criminal law would suffice for the purpose we should have most gladly adopted his view and perhaps saved a good deal of trouble and misunderstanding. But all the other members agree that the provisions referred to by Mr. Bensley won't answer at all.

As regards the nature of the penalty, the Council has shown every anxiety to respect the feelings of the memorialists and have softened the provision to the utmost extent possible. It is now stripped of imprisonment and is confined to fine. The definition of 'place of public worship' has been so modified as to avoid needless interference. The section in its present shape cannot therefore give rise to any reasonable objection. All that has to be done is to apply for permission when a place of worship is proposed to be erected and when that is obtained the parties have full freedom of action and sufficient legal protection. Several Roman Catholic Missionaries to whom I have had an opportunity of speaking on the subject have expressed unqualified approval of the measure. Much stress seems to be laid on the delay occurring in the disposal of applications for permission. Oftentimes delay becomes inevitable from the complicated nature of the issues involved. Due care will, however, be taken to prevent all avoidable dilatoriness. With these observations I fully support the mover and repeat the assurance that it is not at all intended to deviate from the recognized policy of toleration but to promote and strengthen it in every possible way.

It was now 5–30′ and the Council adjourned to next Saturday, 27th June.

SHUNGRASOOBYER.
President.

LIBRARY ARCHIVES Kerala Legislative Assembly